

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MARK A. BARRY, M.D., §
§
Plaintiff, § Civil Action 1:14-cv-00104
v. §
§
MEDTRONIC, INC. § Judge Ron Clark
§
Defendant. §

JOINT STATUS REPORT REGARDING *INTER PARTES* REVIEW PROCEEDINGS

Pursuant to this Court's August 18, 2014 Order granting the Joint Motion to Stay Pending *Inter Partes* Review (Dkt. 32), Plaintiff Mark A. Barry, MD ("Dr. Barry") and Defendant, Medtronic, Inc., ("Medtronic") (collectively, the "Parties") respectfully submit this Joint Status Report to update the Court on the proceedings before the Patent Trial and Appeal Board ("PTAB").

On February 10, 2015, the Patent Trial and Appeal Board ("PTAB") notified the Parties that the PTAB had decided to deny institution of *inter partes* review ("IPR") for all three of the petitions filed by Medtronic on July 27, 2014 (the "Decisions"). In view of certain defects of the IPR petitions noted by the PTAB in the Decisions, and errors that Medtronic contends the PTAB made in its rulings, Medtronic intends to file a revised and supplemented IPR petition by or before February 20, as well as a separate request for reconsideration. The written Decisions issued by the PTAB denying institution of IPR are attached as Exhibit A.

Subsequent to the notice from the PTAB denying the institution of the IPR, counsel for the Parties conferred, and each side believes that immediate settlement discussions, including mediation, are likely to be beneficial. The Parties therefore request thirty (30) days from the filing of this Joint Status Report to exchange information necessary for settlement discussions, and

prepare for and conduct a mediation. The Parties jointly agreed to use Judge Folsom as a mediator in the initial scheduling order, but to the extent his schedule cannot accommodate the Parties within the 30-day period, they will ask the Court for a short extension, or will ask the Court to designate a mediator. At the end of the 30-day time period, the Parties will provide a status update to the Court, and, if necessary, either request that the stay be maintained, or that it be lifted and a new scheduling order entered.

Accordingly, the Parties respectfully request thirty (30) days to discuss settlement.

Dated: February 17, 2015

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Jointly submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 17, 2015, a true and correct copy of the foregoing document was served upon all known counsel of record through the Court's ECF system pursuant to Federal Rule of Civil Procedure 5(b)(3) and Local Rule CV-5.

/s/ Michael D. Ellis
Michael D. Ellis